

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

THOMAS FREDERICK LEONARD,

Petitioner,

v.

D. CUEDA,

Respondent.

No. 2:23-cv-02693-DAD-DMC (HC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS, GRANTING  
RESPONDENT'S MOTION TO DISMISS,  
AND DISMISSING HABEAS PETITION

(Doc. Nos. 13, 17)

Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On September 10, 2024, the assigned magistrate judge issued findings and recommendations recommending that respondent's unopposed motion to dismiss the pending petition for federal habeas relief (Doc. No. 13) be granted. (Doc. No. 17.) Specifically, the magistrate judge concluded that none of petitioner's claims asserted in the operative petition were first presented to the state's highest court for review before the filing of this federal habeas action as is required. (*Id.* at 2–3.) In addition to the failure to exhaust all claims in state court, the magistrate judge also concluded that petitioner's Fourth Amendment claim<sup>1</sup> failed to state a

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<sup>1</sup> Petitioner asserts in this claim that evidence obtained from an illegal search and seizure was used against him in his underlying state court criminal proceeding.

1 cognizable claim for federal habeas relief under the decision in *Stone v. Powell*, 428 U.S. 465,  
2 494 (1976). (*Id.* at 3–4.)

3 The pending findings and recommendations were served on the parties and contained  
4 notice that any objections thereto were to be filed within fourteen (14) days after service. (*Id.* at  
5 4.) To date, no objections to the findings and recommendations have been filed, and the time in  
6 which to do so has now passed.

7 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a  
8 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the  
9 findings and recommendations are supported by the record and by proper analysis.

10 Pursuant to Rule 11(a) of the Federal Rules Governing Section 2254 Cases, the court has  
11 considered whether to issue a certificate of appealability. *See* L.R. 191(j). A habeas petitioner  
12 may appeal only those claims for which a certificate of appealability is granted. *See* 28 U.S.C. §  
13 2253(c); Fed. R. App. P. 22(b); *Rios v. Garcia*, 390 F.3d 1082, 1088 (9th Cir. 2004); *see also*  
14 *Miller–El v. Cockrell*, 537 U.S. 322, 335–36 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484  
15 (2000).

16 A certificate of appealability may issue “only if the applicant has made a substantial  
17 showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The court must either  
18 issue a certificate of appealability indicating which issues satisfy the required showing or state the  
19 reasons why such a certificate should not issue. Fed. R. App. P. 22(b).

20 Where constitutional claims are denied on the merits, the petitioner must show that  
21 reasonable jurists would find the district court’s assessment of the constitutional claims debatable  
22 or wrong. *Slack*, 529 U.S. at 484–85. Where the petition is dismissed on procedural grounds, a  
23 certificate of appealability should issue if the prisoner can show: (1) that jurists of reason would  
24 find it debatable whether the district court was correct in its procedural ruling; and (2) that jurists  
25 of reason would find it debatable whether the petition states a valid claim of the denial of a  
26 constitutional right. *Id.*

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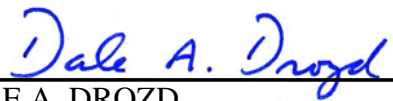
1 In the present case, the court concludes that reasonable jurists would not find the court's  
2 dismissal of petitioner's claims to be debatable, wrong, or deserving of encouragement to proceed  
3 further.

4 Accordingly:

- 5 1. The findings and recommendations filed September 10, 2024 (Doc. No. 17) are  
6 adopted in full;
- 7 2. Respondent's unopposed motion to dismiss the petition (Doc. No. 13) is granted;
- 8 3. This action is dismissed;
- 9 4. The Court declines to issue a certificate of appealability; and
- 10 5. The Clerk of the Court is directed to close this case.

11 IT IS SO ORDERED.

12 Dated: January 24, 2025

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14 DALE A. DROZD  
15 UNITED STATES DISTRICT JUDGE  
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